

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re: Mark J. Criscuolo)	
)	Case No.: 09-14063-SSM
)	Chapter 13
Mark J. Criscuolo,)	
Plaintiff)	
)	Adversary Proceeding No.: _____
v.)	
)	
IndyMac Federal Bank)	
Defendant)	
)	
_____)	

COMPLAINT TO DETERMINE SECURED STATUS AND AVOID LIEN

Mark J. Criscuolo, Debtor, by counsel states the following:

1. Debtor filed a petition [doc. 1] commencing a chapter 13 case before this honorable court on May 21, 2009.
2. This complaint is filed under Federal Rules of Bankruptcy Procedure Rule 7001 to determine the validity of a lien.
3. Jurisdiction lies with this court under 28 USC §151 and 28 USC §157. This is a core proceeding under 28 USC §157(b)(2).
4. Included in the Chapter 13 estate of this case is Debtors' real property("Property") identified as

LOT 5, PHASE 4, SECTION 1, VIRGINIA OAKS, AS THE SAME IS SHOWN ON A PLAT ATTACHED TO DEED OF RESUBDIVISION, EASEMENT, VACATION AND SUBORDINATION RECORDED IN DEED BOOK 2813, PAGE 758, AS CORRECTED IN DEED BOOK 2851, PAGE 1665, AMONG THE LAND RECORDS OF PRINCE WILLIAM COUNTY, VIRGINIA.

5. Property is subject to two recorded Deeds of Trust held by SunTrust Mortgage and Defendant IndyMac Federal Bank:

(a) SunTrust Mortgage, loan number 0142830702, holds the first Deed of Trust, recorded on November 20, 2006 among the land records of Prince William County bearing the Instrument No. 200611300168080 ("SunTrust Deed of Trust"). A true and complete copy of the SunTrust Deed of Trust is attached as Exhibit A.

(b) IndyMac Federal Bank, Successor in Interest to Mortgageit, Inc.'s loan number 3002593808, holds the second Deed of Trust, recorded on December 29, 2006 among the land records of Prince William County bearing the instrument no. 200612290180051 ("IndyMac Deed of Trust"). A true and complete copy of the IndyMac Deed of Trust is attached as Exhibit B.

6. The principal balance owed by the Debtor to SunTrust, which is secured by the SunTrust Deed of Trust, is \$470,591.46 as of February 17, 2009.
7. The principal balance owed by the Debtor to IndyMac, which is secured by the IndyMac Deed of Trust, is 103,831.70 as of February 19, 2009.

8. Based upon the appraisal conducted by Daniel Thomas Gartrell on May 7, 2009, the value of the Real Property is \$425,000. A true and complete copy of the appraisal is attached as Exhibit C.

9. IndyMac Federal Bank's interest in the Real Property is completely unsecured.

WHEREFORE Plaintiff Mark J. Criscuolo, by counsel, requests that the Court determine that the value of the Property to be \$425,000; that IndyMac Federal Bank, Successor in Interest to Mortgageit, Inc. shall be treated as an unsecured claim; and void the Deed of Trust of IndyMac Federal Bank, Successor in Interest to Mortgageit, Inc. upon the Real Property; and grant such other and further relief as the Court deems appropriate.

MARK JOSPEH CRISCUOLO
BY COUNSEL

/s/ Martin C. Conway
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, postage prepaid, and filed electronically via CM/ECF on this 1st day of September, 2009 to the creditors and parties in interest on the attached Service List and the following parties:

/s/Martin C. Conway
Martin C. Conway

IndyMac Mortgage Services
1 Banting
Irvine, CA 92618

W. Clarkson McDow, Jr., Trustee
Office of the U.S. Trustee
115 South Union Street
Alexandria, VA 22314